

IN THE UNITED STATES PATENT AND TRADEMARK OFFICERECEIVED
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Application No. : 09/998,855
 Applicant : Agapios Agapiou et al.
 Filed : November 15, 2001
 Art Unit : 1755
 Examiner : Pasterczyk, James W.
 Docket No. : 2000U055.US
 Customer No. : 25959
 Date : July 26, 2004

Confirmation No. 6866

JUL 26 2004

OFFICIAL

Mail Stop AF
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.181

Sir:

Applicant's Petition for withdrawal of the Final Rejection, mailed May 24, 2004, as premature.

ISSUE

Whether the Final Rejection, issued on the Third Office Action in the above referenced case, is premature.

FACTS

- i) A Second, Non-Final Action was issued April 20, 2004 Rejecting claims 1,3 5-7, and 19-22. Applicants responded May 7, 2004, with a Response under 37 C.F.R. § 1.111.
- ii) A Third Action, mailed May 24, 2004, was made Final.

2000U055.US.Petition.07.26.04.doc

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USSN 09/998,855

Petition Dated July 26, 2004

Response to Office Action Dated: May 24, 2004

- iii) The Third Action referred to in ii), contained new rejections, based on two newly cited documents (US 4,397, 761, or in the alternative, US 5,075,394).
- iv) In the Response referred to in i) above, Applicants amended independent claims 1 and 6, and cancelled claim 2, 4, 7 and 8. The amendment to independent claims 1 and 6 incorporates verbiage from cancelled claims 2, and 8 further defining the gelling agent of claims 1 and 6 respectively. A second amendment to claims 1 and 6 was adding "alkyl" as a modifier to "quaternary ammonium salts". Two new claims (21 and 22) were added, further limiting the catalyst of claims 1 and 6 respectively

ARGUMENT

The making Final of the Third Action is in error, based on iv) above, for the following reason:

The new 35 U.S.C. § 103 rejection was stated to be based on an amendment to the claims made by Applicants. MPEP 706.07(a) is clear that a Final Rejection is proper "... except where the examiner introduces new ground of rejection not necessitated by amendment of the application by applicant ...". Applicants' amendments to the present claims, were all either specific embodiments in front of the Examiner at the time of the second non-final action as dependent claims, or the amendments represent embodiments not addressed by the newly cited documents. The new claims were (claims 21 and 22 dependent to independent claims 1 and 6), introduced further limitation to the catalyst element of the independent claims, and again, by further limiting a broader claim such embodiments (based on the disclosure of the Specification) were in front of the Examiner before introduction of the new claims. No quaternary ammonium salts are disclosed by the newly cited documents, so the inclusion of the word "alkyl" as a modifier to "quaternary ammonium salts" would not appear to be addressed by the new Rejection. No broader subject matter was introduced by Applicants' amendments.

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CONCLUSION

The facts, outlined above, do not support a proper Final Rejection. Based on the above, the Action made Final was premature.

Accordingly, Applicants respectfully Petition to have the Finality reversed, with a new time for response set.

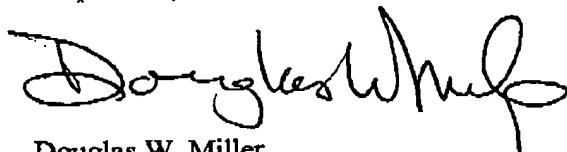
USSN 09/998,855
Petition Dated July 26, 2004
Response to Office Action Dated: May 24, 2004

Note is made that the correspondence should be sent to

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However the telephone number for Douglas W. Miller is (713) 780-7799.

Respectfully submitted,



Douglas W. Miller
Agent for Applicants
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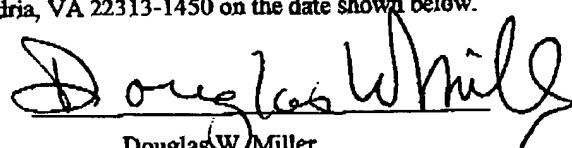
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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

July 26, 2004

Date



Douglas W. Miller
Registration No. 36,608


 PTO/SB/17 (11-01)
 Approved for use through 10/21/2002. OMB 0651-0032
 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

 30⁰⁰
Tow

Complete If Known

Application Number	09/998,855
Filing Date	November 15, 2001
First Named Inventor	Agapito US K-Han, plou
Examiner Name	James W. Pastorek
Group Art Unit	1755
Attorney Docket No.	2000VOSS.US

METHOD OF PAYMENT (check all that apply)

<input type="checkbox"/> Check	<input checked="" type="checkbox"/> Credit card	<input type="checkbox"/> Money Order	<input type="checkbox"/> Other	<input type="checkbox"/> None
<input type="checkbox"/> Deposit Account				
Deposit Account Number				
Deposit Account Name				

The Commissioner is authorized to: (check all that apply)

<input checked="" type="checkbox"/> Charge fee(s) indicated below	<input checked="" type="checkbox"/> Credit any overpayments
<input type="checkbox"/> Charge any additional fee(s) during the pendency of this application	<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION
1. BASIC FILING FEE

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
101 740	201 370	Utility filing fee	
106 330	206 165	Design filing fee	
107 510	207 255	Plant filing fee	
108 740	208 370	Reissue filing fee	
114 160	214 80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent	Extra Claims	Fee from below	Fee Paid
		-20**	=	
		-3**	=	

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
103 18	203 9	Claims in excess of 20
102 84	202 42	Independent claims in excess of 3
104 280	204 140	Multiple dependent claim, if not paid
109 84	209 42	** Reissue independent claims over original patent
110 18	210 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)
3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
105 130	205 85	Surcharge - late filing fee or oath	
127 50	227 25	Surcharge - late provisional filing fee or cover sheet	
139 130	139 130	Non-English specification	
147 2,520	147 2,520	For filing a request for ex parte reexamination	
112 920*	112 920*	Requesting publication of SIR prior to Examiner action	
113 1,840*	113 1,840*	Requesting publication of SIR after Examiner action	
115 110	215 55	Extension for reply within first month	
116 400	216 200	Extension for reply within second month	
117 920	217 480	Extension for reply within third month	
118 1,440	218 720	Extension for reply within fourth month	
128 1,980	228 980	Extension for reply within fifth month	
119 320	219 160	Notice of Appeal	
120 320	220 160	Filing a brief in support of an appeal	
121 280	221 140	Request for oral hearing	
138 1,510	138 1,510	Petition to institute a public use proceeding	
140 110	240 55	Petition to revive - unavoidable	
141 1,280	241 640	Petition to revive - unintentional	
142 1,280	242 640	Utility issue fee (or reissue)	
143 460	243 230	Design issue fee	
144 820	244 310	Plant issue fee	
122 190	122 130	Petitions to the Commissioner	
128 50	123 50	Processing fee under 37 CFR 1.17(d)	
126 180	128 180	Submission of Information Disclosure Stmt	
581 40	581 40	Recording each patent assignment per property (times number of properties)	
148 740	246 370	Filing a submission after final rejection (37 CFR § 1.128(a))	
149 740	249 370	For each additional invention to be examined (37 CFR § 1.128(b))	
179 740	279 370	Request for Continued Examination (RCE)	
169 900	169 800	Request for expedited examination of a design application	
Other fee (specify)			

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

 130⁰⁰
SUBMITTED BY

Name (Print/Type)	Douglas W Miller	Registration No. Attorney/Agent	36,608	Telephone	713.780.7766
Signature	Douglas W Miller				
Date	July 26, 2003				

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